

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2010 MAY 12 AM 9:50

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

DEPUTY

ROBERT KLEBE,

Plaintiff

v.

Case No.1:08-CV-00091-AWA

UNIVERSITY OF TEXAS
HEALTH SCIENCE CENTER
AT SAN ANTONIO,

Defendant.

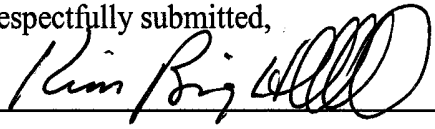
§
§
§
§
§
§
§
§
§
§
§

DEFENDANT'S NOTICE OF APPEAL

Notice is hereby given that Defendant in the above-named case, University of Texas Health Science Center at San Antonio (the "University"), hereby appeals to the United States Court of Appeals for the Fifth Circuit from this Court's Final Judgment, dated December 23, 2009. *See* Exhibit A. The University timely filed a motion for judgment as a matter of law and motion for new trial following the entry of that judgment. Those motions were denied in an order dated April 13, 2010, and entered on April 14, 2010. The University also appeals this court's Judgment on Attorney's Fees, dated April 13, 2010, and entered on April 14, 2010. *See* Exhibit B.

Dated: May 12, 2010

Respectfully submitted,



GREG ABBOTT
Attorney General of Texas
C. ANDREW WEBER
First Assistant Attorney General
DAVID S. MORALES
Deputy Attorney General for Civil
Litigation
ROBERT B. O'KEEFE
Chief, General Litigation Division
LARS HAGEN
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548
(512) 463-2120
(512) 320-0667 (fax)

KIM E. BRIGHTWELL
State Bar No. 02992700
SINEAD M. O'CARROLL
State Bar No. 24013253
Reeves & Brightwell LLP
221 W. 6th Street, Suite 1000
Austin, TX 78701-3410
(512) 334-4500
(512) 334-4492 (fax)

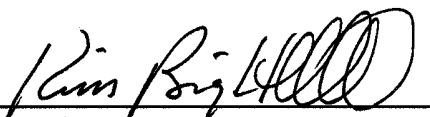
**ATTORNEYS FOR DEFENDANT
UNIVERSITY OF TEXAS HEALTH
SCIENCE CENTER AT SAN ANTONIO**

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 2010, a copy of the foregoing document was sent via facsimile to the following:

John Judge
Stan M. Putman, Jr.
Judge Kostura & Putnam, P.C.
The Commissioners House at Heritage Square
2901 Bee Cave Rd. Box L
Austin, TX 78746

R. Robert Willmann, Jr.
Attorney at Law
P. O. Box 460167
San Antonio, TX 78246



Kim Brightwell

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ROBERT J. KLEBE

V.

**UNIVERSITY OF TEXAS HEALTH
SCIENCE CENTER AT SAN ANTONIO**

§
§
§
§
§
§
§

A-08-CA-091 AWA

FINAL JUDGMENT

BE IT REMEMBERED that on the 31st day of August 2009, the Court called the above-styled and numbered cause for trial. After the parties announced that they were ready for trial, the Court empaneled a jury of twelve legally qualified jurors. The case proceeded to trial, and after the close of the Defendant's case and both parties had rested, the Defendant moved pursuant to Federal Rule of Civil Procedure 50 to enter judgment for the Defendant on all of the Plaintiff's claims. The Court granted the Defendant's motion for judgment as a matter of law on the Plaintiff's claim that he received negative Post Tenure Evaluation Committee ("PTEC") reviews due to age discrimination. However, the Court denied the motion for judgment as a matter of law on the Plaintiff's claim that the Defendant discriminated against him by cutting his salary and by keeping his salary flat, and that the Defendant retaliated against him by keeping his pay constant and by giving him negative PTEC reviews. Additionally, the Court denied the Defendant's motion for judgment as a matter of law on the Plaintiff's claim that the negative PTEC reviews caused him mental anguish. After this case was submitted to the jury on September 4, 2009, the jury returned its verdict on the same day, answering as follows:

Question No. 1 a.. & b. "No"

Question No. 4 a. & b. "Yes"

Question No. 5 a.. "No"

Question No. 5 b. "Yes"

Question No. 6 a.. "\$0 "

Question No. 6 b. "\$900,000"

All remaining questions were not answered. Thus, the jury awarded Plaintiff \$900,000 in mental anguish damages resulting from the PTEC reviews that the jury found were retaliatory. The Court denied the Defendant's post-verdict Rule 50 motion for judgment as a matter of law, but, finding the damages award excessive in light of the evidence, *sua sponte* ordered a partial retrial on mental anguish damages.

On the 30th day of November 2009, the Court called the above-styled and numbered cause for trial on the limited issue of mental anguish damages stemming from the PTEC reviews. After the parties announced that they were ready for trial, the Court empaneled a new jury of twelve legally qualified jurors. The case proceeded to trial, and after the close of the Plaintiff's case, the Defendant moved to enter judgment for the Defendant or to grant a new trial, both of which the Court denied. Defendant then rested. After the case was submitted to the jury on December 1, 2009, the jury returned its verdict on the same day, answering question No. 1 "\$400,000."

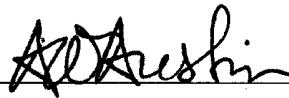
Pursuant to the pleadings, evidence, and verdict of the jury, the Court enters the following judgment:

IT IS ORDERED, ADJUDGED, and DECREED that the Plaintiff Dr. Robert Klebe shall have and recover from Defendant University of Texas Health Science Center at San Antonio the sum

of \$300,000. Interest shall accrue on this amount at the rate of 0.37% per annum from the date of the judgment until paid.¹

As part of this Judgment, IT IS FURTHER ORDERED that the University: (1) remove all documents related to the 2006 and 2008 PTEC reviews of Dr. Klebe from its records; (2) not use these reviews and ratings for *any* purpose; and (3) not communicate the reviews or ratings to any third party. Further, the University IS ORDERED to report its actions in compliance with the injunctive and equitable orders within 30 days of entry of the judgment, unless an appeal is filed, in which event it shall report its actions within 30 days of any final order affirming the injunctive and equitable relief. The report shall take the form of an advisory to the court filed with the Clerk of this Court under the style of this case.

SIGNED this 23rd day of December, 2009.

A handwritten signature in black ink, appearing to read "A. Austin", is written over a horizontal line.

ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE

¹See 28 U.S.C. § 1961.

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ROBERT J. KLEBE

V.

**UNIVERSITY OF TEXAS HEALTH
SCIENCE CENTER AT SAN ANTONIO**

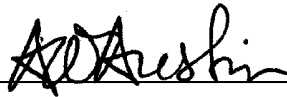
§
§
§
§
§
§

A-08-CA-091 AWA

JUDGMENT ON ATTORNEY'S FEES

On this date, the Court entered an order with regard to the Plaintiff's application for attorney's fees and costs. Based on that order, JUDGMENT is hereby entered in favor of Robert J. Klebe against The University of Texas Health Science Center at San Antonio, in the sum of \$155,422.27, for which let execution issue.

SIGNED this 13th day of April, 2010.



ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE

DUPLICATE

Court Name: TEXAS WESTERN
Division: 1
Receipt Number: 100006425
Cashier ID: tkatzen
Transaction Date: 05/12/2010
Payor Name: REEVES AND BRIGHTWELL LLP

NOTICE OF APPEAL/DOCKETING FEE
For: UT HEALTH SCIENCE CENTER AT SA
Amount: \$455.00

CHECK

Check/Money Order Num: 7665
Amt Tendered: \$455.00

Total Due: \$455.00
Total Tendered: \$455.00
Change Amt: \$0.00

1:08-CV-091 AWA; FILED BY DEFENDANT